

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	January 20, 2015
JEFFREY ALEXANDER STERLING,	.	9:30 a.m.
	.	
Defendant.	.	<u>EXCERPT OF A.M. SESSION</u>
	.	
.	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA DENNIS M. FITZPATRICK, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and ERIC G. OLSHAN, Deputy Chief Public Integrity Section of the Criminal Division United States Department of Justice 1400 New York Avenue, N.W. Suite 12100 Washington, D.C. 20005
---------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. Law Office of Edward B. MacMahon, Jr. 107 East Washington Street P.O. Box 25 Middleburg, VA 20118 and BARRY J. POLLACK, ESQ. MIA P. HAESSLY, ESQ. Miller & Chevalier Chartered 655 - 15th Street, N.W. Suite 900 Washington, D.C. 20005-5701
--------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 CLASSIFIED INFORMATION
3 SECURITY OFFICERS:

CHRISTINE E. GUNNING
MAURA PETERSON

4 ALSO PRESENT:

GERARD FRANCISCO
SA ASHLEY HUNT
JENNIFER MULLIN, ESQ.

6
7 OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Shedd - Cross

4

1 P R O C E E D I N G S

2 * * * * *

3 (Defendant and Jury present.)

4 DAVID RAYMOND SHEDD, GOVERNMENT'S WITNESS, AFFIRMED

5 * * * * *

6 CROSS-EXAMINATION

7 BY MR. MAC MAHON:

8 Q. Good morning, Mr. Shedd.

9 A. Good morning.

10 Q. I'm sorry, I hurt my back. That wasn't a look for you; I
11 apologize.

12 I'm one of the -- my name is Edward MacMahon. I'm
13 one of Mr. Sterling's lawyers. How are you today?

14 A. Doing well, thank you.

15 Q. How many times did you meet with Mr. Trump to go over the
16 testimony that you gave today?

17 A. I believe three times.

18 Q. And, and your testimony was that Mr. Risen's story
19 confirms facts about Classified Program No. 1? Is that what
20 you said?

21 A. It is.

22 Q. Isn't it your testimony that actually confirms what's in
23 Mr. Risen's book as being true?

24 MR. TRUMP: Objection, Your Honor.

25 THE COURT: Sustained.

Shedd - Cross

5

1 BY MR. MAC MAHON:

2 Q. You testified, I think you said that there were assets
3 that won't work with the CIA because of Mr. Risen's book. Did
4 you say that?

5 A. I believe what I said, to be more accurate, are reticent
6 to cooperate with CIA when there is public revelations.

7 Q. Right. And you, you can't tell us today of any single
8 asset or anyone who hasn't cooperated with the CIA because of
9 this book, correct?

10 A. I cannot.

11 Q. Right. And most of those people cooperate with the CIA
12 because of money, right?

13 A. No.

14 Q. CIA pays a lot of money to sources, doesn't it?

15 A. On occasion.

16 Q. Excuse me?

17 A. On occasion.

18 Q. How many times were you interviewed by the FBI when you
19 were asked whether Mr., Mr. Sterling at the House of
20 Representatives made disclosures about Classified Program
21 No. 1?

22 A. To the best of my recollection, two times.

23 Q. Right. And they kept asking you the same question: Did
24 Sterling say anything at the House of Representatives about
25 Classified Program No. 1, correct?

Shedd - Cross

6

1 A. No.

2 Q. That was the question the government kept asking you,
3 wasn't it?

4 A. No. The question was in my presence with Mr. Sheehy and
5 Ms. Wyndee Parker, whether the discussion was held about
6 classified programs.

7 Q. Correct.

8 A. And that's all I would be competent to answer.

9 Q. Right. And you told them no once, and they asked you
10 again, right?

11 A. A second interview, yes.

12 Q. The same question: He must have done something wrong at
13 the interview at the House, right?

14 MR. TRUMP: Objection, Your Honor. He was not
15 present at the interview.

16 THE COURT: Sustained. Rephrase your question.

17 BY MR. MAC MAHON:

18 Q. You -- it is perfectly legal for Mr. Sterling to go to the
19 House of Representatives and complain about what he considered
20 as discrimination at the House, correct?

21 MR. TRUMP: Objection, Your Honor. Mr. Shedd is not
22 an attorney.

23 THE COURT: Well, Mr. Shedd, if you know. And if you
24 don't know, don't guess.

25 THE WITNESS: Could you repeat the question?

Shedd - Cross

7

1 BY MR. MAC MAHON:

2 Q. It was completely legal for Mr. Sterling to go to the
3 House of Representatives and complain about what he considered
4 was unfair treatment at the CIA, correct?

5 A. I believe so from a legal standpoint.

6 Q. And you, you were never told of any information that
7 Mr. Sterling disclosed to the House of Representatives that he
8 wasn't entitled to disclose, correct?

9 A. That's correct.

10 Q. You told the FBI that Mr. Risen is on your blacklist? Is
11 that a term you used?

12 A. I believe so.

13 Q. And Mr. Risen is on a blacklist because he writes stories
14 that are critical of the CIA, correct?

15 A. No. He is on my blacklist because I had no interest in
16 speaking to him, and I had his efforts to contact me blocked.

17 Q. Okay. And when did that happen?

18 A. During my period at the National Security Council.

19 Q. And how many other journalists did you have blocked from
20 access to you when you worked with the NSC?

21 MR. TRUMP: Objection, Your Honor. Objection. Not
22 relevant.

23 THE COURT: I'm going to overrule that objection.
24 You can answer. Go ahead.

25 THE WITNESS: I do not recall, but the principle of

Shedd - Cross

8

1 the matter was I was not interested in speaking to journalists
2 as an intelligence professional.

3 BY MR. MAC MAHON:

4 Q. Right, but you listed Mr. Risen specifically as the
5 recipient of the blacklist for you, correct?

6 A. I did.

7 Q. Okay. And you testified that the disclosures in the book
8 would tell Iran that we were trying to interfere with their
9 nuclear weapons program? Is that a fair statement of what you
10 said?

11 A. Disrupt would be the accurate word, yes.

12 Q. And your testimony to the jury is that the Iranians don't
13 know that the United States government is trying to interfere
14 with their nuclear weapons program?

15 A. Having it confirmed to them is very different than
16 suspecting that, in fact, we're doing it.

17 Q. Do you believe the Iranians didn't know before 2006 that
18 the Americans were trying to interfere with their nuclear
19 weapons program?

20 A. I do not believe before 2006 that they knew the modalities
21 in which we were trying to interfere or believed to interfere
22 with their nuclear program. That would be a correct statement.

23 Q. Were you ever given any details as to how the delivery of
24 the, I think your term, fire set plan was accomplished by
25 Merlin to the Iranians in Vienna?

Shedd - Cross

9

1 A. Yes.

2 Q. You knew it was delivered wrapped in a newspaper?

3 A. I don't recall how it was delivered.

4 Q. Did you understand that it was actually delivered in
5 person to someone at the Iranian office?

6 MR. TRUMP: Objection. He just testified he does not
7 know how.

8 THE COURT: Sustained.

9 BY MR. MAC MAHON:

10 Q. So you don't know any details about how it occurred,
11 correct?

12 A. That's a loaded word when you say "any details."

13 Q. Do you know any details at all -- you said you were
14 briefed on this program in depth, correct?

15 A. Correct.

16 Q. Okay. Do you remember any details at all about how it was
17 that Merlin delivered the plans for a nuclear weapon to the
18 Iranian office in Vienna?

19 A. He had established contact through a letter, and he then
20 had a meeting at a certain location in Vienna.

21 Q. A meeting with someone from Iran?

22 A. From Iran, correct.

23 Q. Now, Mr. Trump asked you if you did an evaluation of the
24 compromise caused by the publication of *State of War*. Do you
25 remember that?

Shedd - Cross

10

1 A. In terms of chapter 9? Is that what you're referring to?

2 Q. Well, no, of the whole book, *State of War*. That's what he
3 asked you, didn't he?

4 A. I think the reference was to chapter 9.

5 Q. Well, Mr. Tenet asked you to do an analysis of the whole
6 book, correct?

7 MR. TRUMP: Objection, Your Honor. Beyond the scope.

8 THE COURT: And chapter 9 is the only -- chapter 9 is
9 the only issue in this case, so I'm going to -- you can confine
10 that question to chapter 9, please.

11 THE WITNESS: Let the record show it wasn't
12 Mr. Tenet.

13 BY MR. MAC MAHON:

14 Q. Who was it, sir?

15 A. Ambassador Negroponte.

16 Q. Okay. I apologize. But you did do an analysis of chapter
17 9, didn't you?

18 A. I would not call it an analysis.

19 Q. Well, what would you call it?

20 A. I would call it a summary statement of what I believed to
21 be the compromises of chapter 9 in an approximately two-page
22 memo.

23 Q. And you were also asked to do an analysis of who you
24 thought the likely sources were, weren't you?

25 MR. TRUMP: Objection. Beyond the scope.

Shedd - Cross

11

1 MR. MAC MAHON: It's the same analysis.

2 THE COURT: I'm going to, I'm going to permit that.

3 Overruled. So that is a question, sir.

4 BY MR. MAC MAHON:

5 Q. Mr. Shedd --

6 A. Repeat the question.

7 Q. -- you were also asked, weren't you, to do an analysis of
8 who the likely source was for the disclosure of information in
9 *State of War*, chapter 9, correct?

10 A. I was asked what potential individuals would have had
11 access to it; that's correct.

12 Q. Right. And your answer was --

13 THE COURT: Well, be careful. No improper revelation
14 of names.

15 MR. MAC MAHON: I won't, Your Honor.

16 THE COURT: All right, that's fine.

17 BY MR. MAC MAHON:

18 Q. Your answer was that the likely source was agency --

19 MR. TRUMP: Your Honor?

20 THE COURT: Wait.

21 MR. TRUMP: I'm going to object at this point. He's
22 asking for an opinion of this person as to possible sources.

23 THE COURT: The jury will be told that they can't
24 decide this case on conjecture but on the evidence, but I think
25 this evidence is sufficiently relevant to the defense. I'm

Shedd - Cross

12

1 overruling the objection.

2 BY MR. MAC MAHON:

3 Q. Mr. Shedd, do you remember writing this report on
4 chapter -- one paragraph starts "Chapter 9, A Rogue Operation"?
5 No, it's not an exhibit, Mr. Shedd. Do you remember writing
6 it?

7 A. Could you give me a --

8 MR. TRUMP: If there's a report that --

9 THE COURT: Yes, I agree. If you've got a document
10 authored by this witness, it's only fair to show it to him.

11 MR. MAC MAHON: I will, Your Honor.

12 THE COURT: All right. What -- is there an exhibit
13 number? Mr. MacMahon, is that --

14 MR. MAC MAHON: It's not an exhibit, Your Honor. I
15 can show it to him to refresh his recollection.

16 Can I show this to Mr. Wood, Your Honor -- give this
17 to Mr. Wood?

18 THE COURT: Yes, go ahead.

19 Mr. Trump, do you have a copy of that someplace?

20 MR. TRUMP: Someplace, Your Honor, but not --

21 THE COURT: All right.

22 BY MR. MAC MAHON:

23 Q. Just the page, just the page that was opened to,
24 Mr. Shedd.

25 A. I need context.

Shedd - Cross

13

1 Q. And you can go back -- just look at the page that's opened
2 to you, where it says "Analysis of the Compromise." Do you see
3 that? Do you see "Rogue Operation"?

4 A. I'm sorry, I see a blackened page with one sentence.

5 THE COURT: All right, let's approach the bench.
6 (Bench conference on the record.)

7 THE COURT: Mr. MacMahon, you've got to give him more
8 context than this.

9 MR. MAC MAHON: It's all blacked out, Judge. I'm
10 sorry, Your Honor.

11 THE COURT: Well, where did it come from?

12 MR. MAC MAHON: This came from discovery in this
13 case, and if you go back, he did an analysis of the entire
14 book, and it's --

15 THE COURT: Is there a heading? Is this a Lotus
16 note? What is this?

17 MR. MAC MAHON: I think you've got to go back a
18 couple more pages. He's tasked to evaluate the whole book and
19 say who the likely sources are, and his answer is agency
20 officials for chapter 9, and that's the point.

21 THE COURT: All right, but is this the start of it?

22 MR. MAC MAHON: I think so.

23 THE COURT: I'm looking at the Bates stamp numbers.
24 Even they are cut off.

25 Well, show him this first page.

Shedd - Cross

14

1 MR. TRUMP: I don't think this is Mr. Shedd, Your
2 Honor, but it may -- this, this part is, but not up here, I
3 believe.

4 THE COURT: Do you have a better copy with the Bates
5 stamp number?

6 MR. MAC MAHON: This is, this is as good as it gets
7 from what we have in the SCIF.

8 THE COURT: Well, show this to him.

9 MR. MAC MAHON: Can I just approach the witness just
10 briefly, Your Honor?

11 THE COURT: Well, no, Mr. Wood can do that.

12 MR. MAC MAHON: Okay.

13 THE COURT: Give it to him like this, ask him if he
14 recognizes that, and see what happens from there.

15 MR. MAC MAHON: Okay. Thank you.

16 (End of bench conference.)

17 BY MR. MAC MAHON:

18 Q. Mr. Shedd, directing your attention to the first page of
19 that document -- oh, I'm sorry. Excuse me, Your Honor.

20 Mr. Shedd, directing your attention to the first page
21 of that document, do you see what, what we're looking at here?
22 What you're looking at, excuse me.

23 A. There's a lot on the page. What, what aspect of it?

24 Q. Does that refresh your recollection that you wrote a
25 report in which you were asked to, to give information as to

Shedd - Cross

15

1 who you believed the likely source was for the information in
2 chapter 9?

3 A. That's correct.

4 Q. Right. And your answer when we looked at the next page
5 was that in your view, the likely source were agency officials,
6 correct? That's the page with the red tab on it, Mr. Shedd.

7 A. Correct.

8 THE COURT: All right, you can return that.

9 Mr. Wood, if you would, return the document to
10 Mr. MacMahon.

11 MR. MAC MAHON: I don't have any further questions,
12 Your Honor. Thank you.

13 * * * * *

14

15 CERTIFICATE OF THE REPORTER

16 I certify that the foregoing is a correct excerpt of the
17 record of proceedings in the above-entitled matter.

18

19

20

/s/

Anneliese J. Thomson

21

22

23

24

25